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IN THE

Supreme Court of the United States

DENEICE A. MAYLE, Warden,

Petitioner,

vs.

JACOBY LEE FELIX,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

When a habeas petitioner challenging a state judgment amends his petition to include a new claim, does the amendment relate back to the date of the filing of his petition and thus avoid the one-year statute of limitations, 28 U. S. C. § 2244(d)(1), so long as the new claim stems from the prisoner's trial, conviction, or sentence?

TABLE OF CONTENTS

Question presented i

Table of authorities iv

Interest of *amicus curiae* 1

Summary of facts and case 2

Summary of argument 6

Argument 7

I

Federal Rule of Civil Procedure 15(c)(2) should be interpreted in harmony with the unique challenges of federal habeas corpus 7

II

The Ninth Circuit's decision to allow unlimited amendment of habeas petitions under Rule 15(c)(2) is incompatible with the AEDPA 13

A. Unlimited amendment 14

B. Unlimited amendment and finality 18

III

In habeas actions, the relevant "conduct, transaction, or occurrence" for relating back an amended petition under Rule 15(c)(2) must at least come from the same core set of facts as a timely filed claim 20

Conclusion 22

TABLE OF AUTHORITIES

Cases

Allen v. McCurry, 449 U. S. 90, 66 L. Ed. 2d 308, 101 S. Ct. 411 (1980) 8

American Pipe & Constr. Co. v. Utah, 414 U. S. 538, 38 L. Ed. 2d 713, 94 S. Ct. 756 (1974) 9

Baldwin County Welcome Center v. Brown, 466 U. S. 147, 80 L. Ed. 2d 196, 104 S. Ct. 1723 (1984) 9

Barefoot v. Estelle, 463 U. S. 880, 77 L. Ed. 2d 1090, 103 S. Ct. 3383 (1983) 19

Bonin v. California, 59 F. 3d 815 (CA9 1995) 17

Branch v. Smith, 538 U. S. 254, 155 L. Ed. 2d 407, 123 S. Ct. 1429 (2003) 21

Crown, Cork & Seal Co. v. Parker, 462 U. S. 345, 76 L. Ed. 2d 628, 103 S. Ct. 2392 (1983) 9

Davenport v. United States, 217 F. 3d 1341 (CA11 2000) 20

Edwards v. Carpenter, 529 U. S. 446, 146 L. Ed. 2d 518, 120 S. Ct. 1587 (2000) 10

Ellzey v. United States, 324 F. 3d 521 (CA7 2003) 8

Felix v. Mayle, 379 F. 3d 612 (CA9 2004) 4, 5, 8, 14, 15, 17, 20

Fellers v. United States, 540 U. S. 519, 157 L. Ed. 2d 1016, 124 S. Ct. 1019 (2004) 20

Fisher v. Baker, 203 U. S. 174, 51 L. Ed. 142, 27 S. Ct. 135 (1906) 8

Foman v. Davis, 371 U. S. 178, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962) 15

Harris v. Nelson, 394 U. S. 286, 22 L. Ed. 2d 281, 89 S. Ct. 1082 (1969) 8, 21

Holmberg v. Armbrecht, 327 U. S. 392, 90 L. Ed. 743, 66 S. Ct. 582 (1946) 9

In re Dixon, 41 Cal. 2d 756, 264 P. 2d 513 (1953) 10

Jackson v. Virginia, 443 U. S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979) 19

Johnson v. Railway Express Agency, Inc., 421 U. S. 454, 44 L. Ed. 2d 295, 95 S. Ct. 1716 (1975) 10

Lindh v. Murphy, 521 U. S. 320, 138 L. Ed. 2d 481, 117 S. Ct. 2059 (1997) 11

Lonchar v. Thomas, 517 U. S. 314, 134 L. Ed. 2d 440, 116 S. Ct. 1293 (1996) 16

Massiah v. United States, 377 U. S. 201, 12 L. Ed. 2d 246, 84 S. Ct. 1199 (1964) 20

Miranda v. Arizona, 384 U. S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966) 20

O'Sullivan v. Boerckel, 526 U. S. 838, 144 L. Ed. 2d 1, 119 S. Ct. 1728 (1999) 10

Park v. California, 202 F. 3d 1146 (CA9 2000) 10

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Radzanower v. Touche Ross & Co., 426 U. S. 148, 48 L. Ed. 2d 540, 96 S. Ct. 1989 (1976) 21

Railroad Telegraphers v. Railway Express Agency, Inc., 321 U. S. 342, 88 L. Ed. 788, 64 S. Ct. 582 (1944) 9

Riley v. Taylor, 62 F. 3d 86 (CA3 1995) 15

Rose v. Mitchell, 443 U. S. 545, 61 L. Ed. 2d 739, 99 S. Ct. 2993 (1979) 8

Sanders v. United States, 373 U. S. 1, 10 L. Ed. 2d 148, 83 S. Ct. 1068 (1963) 13

Scaife Co. v. Commissioner, 314 U. S. 459, 86 L. Ed. 339, 62 S. Ct. 338 (1941) 10

Schiavone v. Fortune, 477 U. S. 21, 91 L. Ed. 2d 18, 106 S. Ct. 2379 (1986) 9, 10

Tyler v. Cain, 533 U. S. 656, 150 L. Ed. 2d 632, 121 S. Ct. 2478 (2001) 12

United States v. Duffus, 174 F. 3d 333 (CA3 1999) 20

Williams v. Taylor, 529 U. S. 420, 146 L. Ed. 2d 435, 120 S. Ct. 1479 (2000) 11, 16

United States Statutes

28 U. S. C. § 2242 ..... 8, 19, 21

28 U. S. C. § 2244(b)(2)(A) 12

28 U. S. C. § 2244(b)(2)(B) 12

28 U. S. C. § 2244(d)(1) 2, 7, 16

28 U. S. C. § 2254(a) 10

Rules of Court

Federal Rule of Civil Procedure 1 18

Federal Rule of Civil Procedure 8(f) 19

Federal Rule of Civil Procedure 15(a) 15

Federal Rule of Civil Procedure 15(c)(2) 8, 14

Federal Rule of Civil Procedure 61 19

Rules Governing Section 2254 Cases in the United States District Court, Rule 2(d) 15

Rules Governing Section 2254 Cases in the United States District Court, Former Rule 9(a) 16

Rules Governing Section 2254 Cases in the United States District Court, Rule 11 21

Treatises

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Miscellaneous

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

CJLF has appeared as *amicus curiae* in this Court in many cases implementing the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). We have sought to have this

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1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

Act implemented and enforced as Congress intended, opposing the numerous attempts to evade and sabotage it.

This case addresses yet another evasion of the AEDPA. The AEDPA's statute of limitations for habeas, see 28 U. S. C. § 2244(d)(1), is an integral part of Congress's reform of habeas corpus. By ensuring a definite and relatively quick starting point for habeas litigation, the statute of limitations helps to preserve the finality of convictions by speeding the pace of litigation. The Ninth Circuit's decision to effectively allow the unlimited relation back of untimely amendments hamstrings this reform, by allowing unnecessary delay through the dilatory amendment of habeas petitions. This assault of the finality of convictions is contrary to the interests that CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

On September 21, 1993, at about 11:00 p.m., Lawrence Gallow and his girlfriend Paula were driving in Sacramento, California, when the car ran out of gas near the corner of Eighth Avenue and San Jose Way. *People* v. *Lawson*, No. C021597 (Cal. App. Feb. 25, 1997), p. 2; App. to Pet. for Cert. E-2. Gallow asked a man across the street, Richard Harper, to give them a ride to a gas station. See *ibid.* Harper agreed to give them a lift. See *ibid.*

As the three approached Harper's car, an armed man who wore a red rag over his face and a hood over his head ordered them "to 'give up the car.' " *Id.*, at 3. The three fled on foot. See *ibid.* Gallow took cover behind his own car where he saw two more similarly dressed men approach. See *ibid.* One had a handgun and approached Harper's car while the other had a "big military-style weapon" and went to the middle of the intersection. *Ibid.* Gallow ran and was chased by the man with the large weapon. His pursuer fired at least one shot at him, but Gallow ultimately found his way home to safety. See *ibid.*

Harper was not so lucky. The other gunmen pursued him and shot at him several times. See *ibid.* "He was found dead in a field not far from his car, with a bullet in the back of his head." *Id.*, at 3-4. After Harper's murder, two of the robbers took Harper's car and drove away with the headlights off. See *id.*, at 4. Later that night, Harper's car showed up at Felix's house and was followed by Felix's vehicle five to ten minutes later. See *ibid.* Three or four men got out of Felix's vehicle and talked, while the passenger door of Harper's car stayed open. See *ibid.* The police discovered Harper's car at the same location the next day. See *ibid.* A palmprint and fingerprint of Mario Lawson, Felix's codefendant in state court, was found in the back of Harper's vehicle. See *ibid.*

One month later, Nathan Potts, who was under arrest for armed robbery, negotiated a deal with the police to provide information about the Harper murder in return for no prison time. See *ibid.* Potts lived above Lawson, who was his good friend and also knew Felix. See *id.*, at 4-5. Potts stated that one morning just after the murder he went outside to see Lawson and Felix installing stereo equipment into Felix's car. *Id.*, at 5. In a conversation about the murder, Lawson admitted his involvement in the crime, while Felix stated that a woman might have noticed him and that "he was 'going back to smoke [shoot] her.' " *Ibid.* Later, a distraught Felix told Potts that others were trying to implicate him and that he had an alibi for the police. *Ibid.*

When interviewed by the police, Felix and Lawson gave false and contradictory statements about their activities on the night of the murder. The prosecution's case centered on a police interview given by Kenneth Williams. *Id.*, at 6. Williams was crying at the beginning of the videotaped interview because he did not want to snitch on his friends. See *ibid.* Williams stated that he overheard Felix, Lawson, and a third man, Curtis, plan to rob Harper for some marijuana. See *id.*, at 6-7. Curtis had a .38 revolver while Felix had an automatic weapon. *Id.*, at 7. Williams then saw the three "go around the

corner and about two minutes later six or seven shots rang out." *Ibid.* He then saw Curtis and Felix drive away in Harper's car. *Ibid.* Later, as he saw the three going through Harper's car, Felix admitted that he believed he had shot Harper. See *ibid.* Williams denied remembering the interview at trial even after being shown excerpts of the videotape. See *ibid.*

At trial, counsel objected to the use of Felix's statement on Fifth Amendment grounds and William's statement on Sixth Amendment grounds. See Opp. 2. Felix's statements were used to impeach his testimony. *Ibid.*, n. 2. Felix was convicted of first-degree murder and second-degree robbery in 1995. See *Felix* v. *Mayle*, 379 F. 3d 612, 614 (CA9 2004). The jury also found the special circumstance that the murder was committed during the course of a robbery, and Felix was sentenced to life without parole. Pet. for Cert. 3. On his direct appeal, he contended that the use of videotaped statements of a key prosecution witness violated the Sixth Amendment's Confrontation Clause. See *People* v. *Lawson*, *supra*, at 10-13.[2] He also raised a state-law instructional issue concerning Williams' testimony, see *id.*, at 8, challenged the jury's findings that he was a " 'major participant' " in the robbery and murder, a requirement for the "special circumstance" finding. See *id.*, at 13-16. He also challenged the constitutionality of his reasonable doubt instruction. See *id.*, at 16. He did not raise his Fifth Amendment claim on appeal. The California Court of Appeal rejected his claims and affirmed the conviction. *Id.*, at 17. The California Supreme Court subsequently denied Felix's petition for review on May 14, 1997. See *People* v. *Lawson*, No. S060031, California Supreme Court Minutes, p. 747 (May 14, 1997). His conviction became final on August 12, 1997, when his time to file a certiorari petition expired.

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2. *People* v. *Green*, 3 Cal. 3d 981, 479 P. 2d 998 (1971), discussed by the state court, is based purely on the federal Confrontation Clause, not state grounds.

Felix filed a *pro se* federal habeas corpus petition on May 8, 1998. See *Felix*, 379 F. 3d, at 614. This petition raised the same arguments that were made on his direct appeal. See *ibid.* The District Court appointed the Federal Defender as counsel for Felix on May 29, 1998. See Pet. for Cert. 3. The AEDPA's one-year statute of limitation expired on August 11, 1998. See 379 F. 3d, at 614. Through counsel, Felix filed an amended petition that added a new claim, that the Fifth Amendment self-incrimination privilege and due process were violated by the admission of incriminating statements made by Felix during a police interview. See *ibid.* The amended claim was filed on January 28, 1999, after the expiration of the statute of limitations. *Ibid.*

The District Court rejected the Fifth Amendment claim as time barred under the AEDPA. See *ibid.* It accepted the magistrate's recommendation that the new claim did not relate back under Federal Rule of Civil Procedure 15(c)(2) because it did not arise "from 'the same core of facts' " as the Sixth Amendment claim. *Ibid.* The District Court issued a certificate of appealability for the Fifth and Sixth Amendment claims. See *id.*, at 614-615.

The Ninth Circuit panel rejected the District Court's statute of limitation analysis. See *id.*, at 617. It held that under Rule 15(c)(2) "the proper 'conduct, transaction, or occurrence' in a habeas context is the trial and conviction under attack." *Id.*, at 615. This followed the reasoning of a Seventh Circuit opinion, while disagreeing with the Third, Fourth, Eighth, Eleventh and D.C. Circuits. See *id.*, at 615-616. Since Felix's Fifth Amendment claim attacked the legality of his trial, the Ninth Circuit held that it related back to his Sixth Amendment claim. See *id.*, at 617. The Court of Appeals remanded the confession claim to the District Court, see *ibid.*, and denied the Confrontation Clause claim on the merits. See *id.*, at 617-618.

This Court granted certiorari on January 7, 2005.

SUMMARY OF ARGUMENT

Federal Rule of Civil Procedure 15(c)(2) should be interpreted in harmony with the unique challenges of habeas corpus. Before interpreting Rule 15(c)(2) in habeas cases, it is important to understand how the rule works in civil cases. Civil statutes of limitation are meant to give parties fair notice of adverse claims against them. A party typically does not begin its defense against a claim until receiving notice of the claim when the action is filed. Civil statutes of limitation protect parties from trial by ambush by preventing the revival of stale claims. While important to fairness, civil statutes of limitation can seem harsh or even arbitrary. Rule 15(c)(2) ameliorates some of this by allowing relation back where the adverse party's notification interest is not prejudiced.

The habeas statute of limitation protects a different interest. Finality is a linchpin of the AEDPA and the habeas statute of limitation. The lack of finality in the old habeas system was a major source of criticism and inspired the habeas statute of limitation in the Powell Committee's proposals. Since federal habeas necessarily involves the litigation of previously litigated issues, the habeas statute of limitation does not center on notice. The relationship between Rule 15(c)(2) and the habeas statute of limitation must instead center on finality.

The Ninth Circuit's interpretation of Rule 15(c)(2) hamstrings the habeas statute of limitation. Defining the entire trial and conviction as one transaction effectively allows for the unlimited relation back of amendments, as any new claim will come within the statutory language of Rule 15(c)(2). This is not what Congress intended when it enacted a statute of limitation for habeas. While the federal courts had the power to deny dilatory amendments under the old regime, Congress was dissatisfied with the pace of habeas litigation. The AEDPA and its statute of limitation is Congress's response to this problem, by funneling claims into a single habeas petition with a definitive starting and ending point. The statute of limitation does not merely give courts the power to deny

untimely amendments, it gives them the duty to do so. The Ninth Circuit's ruling allows courts to avoid this duty by giving it the power to allow the unlimited amendment of claims. This hamstrings the finality interest that the habeas statute of limitation protects, and should be rejected.

Other circuit courts have found a better approach to Rule 15(c)(2) in habeas actions. They only allow an amended claim to relate back if the claim comes from the same core set of facts as a timely filed claim. The Ninth Circuit rejected this approach, asserting this reading would render Rule 15(c)(2) a virtual nullity in habeas cases. This is incorrect. It is possible for a set of facts to support more than one constitutional ground for attacking the conviction. For example, a custodial interrogation can support both a *Miranda* and a *Massiah* claim. An amendment with a *Massiah* claim would relate back to a timely *Miranda* claim arising from the same interrogation under this rule.

Congress's intent to preserve finality through the habeas statute of limitation should take precedence over a broad application for Rule 15(c)(2). The narrower rule preserves finality by restricting relation back while allowing some measure of relation back where the core facts are already being litigated. Nothing more is necessary. The petitioner has already had the opportunity to litigate his claims in state court. If he cannot file one within the one-year statute of limitation, then there is no compelling need to relitigate this claim.

ARGUMENT

I. Federal Rule of Civil Procedure 15(c)(2) should be interpreted in harmony with the unique challenges of federal habeas corpus.

This case addresses how much meaning is to be given to the AEDPA's one-year statute of limitation for filing federal habeas corpus claims. See 28 U. S. C. § 2244(d)(1). As the

dissent below notes, the majority's ruling "obliterates AEDPA's one year statute of limitation." *Felix* v. *Mayle*, 379 F. 3d 612, 619 (CA9 2004) (Tallman, J., concurring and dissenting). Defining "conduct, transaction, or occurrence," see Fed. Rule Civ. Proc. 15(c)(2), to be the entire trial and conviction makes it too easy for a habeas petitioner to string out the proceedings through repeated amendment of the original habeas petition. See Part II-B. This case will decide whether this important part of the AEDPA will be effective.

The Ninth Circuit is joined by the Seventh Circuit in its expansive reading of Rule 15(c)(2). See *Ellzey* v. *United States*, 324 F. 3d 521, 526 (CA7 2003). These decisions fail to place the rule in its proper context. Although Congress declared that habeas petitions may be "amended or supplemented as provided in" the federal rules of civil procedure, see 28 U. S. C. § 2242, this is not a license to override the reforms of the AEDPA.

The rules of civil procedure may provide the framework for amending and supplementing habeas petitions, but they should be interpreted in the singular context of habeas corpus litigation. While habeas is sometimes labeled a civil proceeding, see, *e.g.*, *Fisher* v. *Baker*, 203 U. S. 174, 181 (1906), this is "gross and inexact. Essentially, the proceeding is unique." *Harris* v. *Nelson*, 394 U. S. 286, 293-294 (1969) (footnote omitted); see also *Allen* v. *McCurry*, 449 U. S. 90, 98, n. 12 (1980) ("unique purpose of habeas corpus"); *Rose* v. *Mitchell*, 443 U. S. 545, 583 (1979) (Powell, J., concurring) ("habeas corpus is a unique remedy"). Therefore habeas practice "has conformed with civil practice in only a general sense." *Harris*, *supra*, at 294. Interpretation of Rule 15(c)(2) and the AEDPA's statute of limitation must be made in the context of habeas corpus's unique challenges and the purpose of the AEDPA.

In order to understand why Rule 15(c)(2) should apply differently to habeas corpus, it is useful to first examine statutes of limitation and the amendment process in ordinary civil litigation.

> "Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, 348-349 (1944).

While there is tension between the mechanical rules of statutes of limitation and federal equity principles, see *Holmberg* v. *Armbrecht*, 327 U. S. 392, 396 (1946), civil limitations of actions are motivated by a sense of fairness. Civil statutes of limitation primarily prevent trial by surprise. See *American Pipe & Constr. Co.* v. *Utah*, 414 U. S. 538, 561 (1974) (Blackmun, J., concurring) (citing *Railroad Telegraphers*, *supra*). This reflects the nature of civil proceedings. The civil defendant usually does not know that he or she will litigate an issue until the filing of the complaint and the service of process. Since the defense cannot start until the defendant is notified that there will be litigation, requiring plaintiffs to file actions within a reasonable time preserves the civil defendant's right to a fair opportunity to mount a defense. Civil statutes of limitation therefore center on notice. See *Crown, Cork & Seal Co.* v. *Parker*, 462 U. S. 345, 352 (1983).

Civil applications of Rule 15(c)(2) are guided by the same principle. "The rationale of Rule 15(c) is that a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitation were intended to provide." *Baldwin County Welcome Center* v. *Brown*, 466 U. S. 147, 150, n. 3 (1984). Therefore an amendment will not relate back if there is insufficient notice to the adverse party. See *Schiavone* v. *Fortune*, 477 U. S. 21, 29 (1986).

Rule 15(c)(2) is remedial in civil cases. A civil statute of limitation prevents a claim from ever being litigated, even if it is valid. Since a statute of limitation requires a set time limit, there is always a degree of arbitrariness in how it operates. See *Johnson* v. *Railway Express Agency, Inc.*, 421 U. S. 454, 463 (1975). Using a necessarily arbitrary time limit to squelch unlitigated claims can seem harsh at times. See *Scaife Co.* v. *Commissioner*, 314 U. S. 459, 463 (1941). By allowing relation back when there is no prejudice to the adverse party, see *Schiavone*, 477 U. S., at 28, Rule 15(c)(2) lessens the harshness and arbitrariness of civil statutes of limitation without harming the adverse party's interest in having fair notice of the claim.

Federal habeas corpus provides a much different context for its statute of limitation and Rule 15(c)(2). Habeas corpus litigates litigation, *i.e.*, the underlying conviction or sentence. The ultimate issue in habeas, the legality of the state's custody over the petitioner, see 28 U. S. C. § 2254(a), was already successfully litigated by the government at the petitioner's trial and direct review. The doctrines of exhaustion and procedural default generally ensure that claims are first litigated in state court before being raised on habeas corpus.[3] See *O'Sullivan* v. *Boerckel*, 526 U. S. 838, 853 (1999) (Stevens, J., dissenting); *Edwards* v. *Carpenter*, 529 U. S. 446, 452-453 (2000). The habeas statute of limitation differs from its civil counterpart because it prevents the relitigation of claims rather than their initial litigation.

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3. Felix's Fifth Amendment claim was raised at trial, but not on his direct appeal. See *supra*, at 4. Hence, it is procedurally defaulted. See *In re Dixon*, 41 Cal. 2d 756, 759, 264 P. 2d 513, 514 (1953). However, Ninth Circuit precedent has effectively nullified the appellate procedural default rule through radical expansions of the adequacy and independence requirements. See, *e.g.*, *Park* v. *California*, 202 F. 3d 1146, 1153 (CA9 2000). *Amicus* CJLF has previously explained why this line of cases is erroneous, see Brief for Criminal Justice Legal Foundation as *Amicus Curiae* in *California* v. *Park*, No. 99-1971, but to date this Court has not granted certiorari on the issue.

The collateral nature of habeas also changes the interests protected by the statute of limitation. While the legislative history of the AEDPA's statute of limitation is minimal, its purpose can be deduced from other sources. The recommendations of the Powell Committee on reforming federal habeas in capital cases, see Judicial Conference of the United States, Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, Committee Report and Proposal (Aug. 23, 1989) ("Powell Committee"), reprinted in 135 Cong. Rec. 24,694 (1989), was a major influence of the AEDPA. See *Lindh* v. *Murphy*, 521 U. S. 320, 340-341, n. 2 (1997) (Rehnquist, C. J., dissenting). A 180-day statute of limitation for federal habeas in capital cases was an important component of their proposed reforms. See Powell Committee, *supra*, at 18. The committee's proposal was motivated by what it saw as a serious problem with the use of federal habeas corpus to delay the execution of the sentence in capital cases. See *id.*, at 5. It sought a system where the habeas petitioner in capital cases had "one complete and fair course of collateral review in the state and federal system . . . ." *Id.*, at 6. Once "this review has concluded, litigation should end." *Ibid.*

A statute of limitation for habeas was essential to this goal. It was designed to minimize the substantial incentives that capital prisoners have to use habeas corpus as a tool for delay. See *id.*, at 19. The statute of limitation "serves the state interests in prompting finality in capital cases." *Ibid.* Although it operates like a statute of limitation, the Powell Committee compared the time limit to "the time provided for appeals in the state and federal systems, or for seeking certiorari review in the Supreme Court." *Id.*, at 6.

While the AEDPA takes a different form than the Powell Committee proposal, it advances similar goals. The AEDPA is intended "to further the principles of comity, finality, and federalism." *Williams* v. *Taylor*, 529 U. S. 420, 436 (2000). Like the Powell Committee proposal, the AEDPA is meant to allow the prisoner only one review of the conviction and

sentence on federal habeas corpus. A successive petition must either satisfy the high standard for applying a new rule retroactively on habeas corpus, see 28 U. S. C. § 2244(b)(2)(A); *Tyler* v. *Cain*, 533 U. S. 656, 665 (2001), or good cause plus a strong showing of actual innocence. See 28 U. S. C. §§ 2244(b)(2)(B)(i)-(ii). The exhaustion requirement, see *supra*, at 10, further ensures that all claims are presented at once. These provisions funnel all claims towards a single habeas proceeding, in order to minimize habeas' damage to the finality of convictions.

Finality is one of the major problems of federal habeas corpus. The most compelling criticisms of this Court's expansion of habeas corpus emphasized the considerable harm that comes from the endless relitigation of convictions on federal habeas. For example, any factual issue related to the collateral attack is less reliably determined the longer the wait from the trial and conviction. See H. Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 147 (1970). Delays in habeas litigation can also make retrial impossible as time erodes memories and evidence. See *ibid.*

Finality is essential to an effective criminal law. See P. Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 452 (1963). Continuous relitigation of convictions "implies a lack of confidence about the possibilities of justice that cannot but war with the underlying substantive commands." *Ibid.* The free reopening of state criminal judgments only lessens respect for the decisions of the criminal courts. See Friendly, 38 U. Chi. L. Rev., at 149. Diminishing finality also wastes scarce judicial, investigative, and attorney resources on relitigating criminal convictions. See *id.*, at 148; Bator, *supra*, at 451. The resources wasted by relitigation on habeas are not merely economic, but also "intellectual, moral, and political . . . ." Bator, *supra*, at 451. A lack of finality necessarily limits the conscientiousness of the trial judge as habeas devolves into

"second-guessing merely for the sake of second-guessing." *Ibid.*

Attacks on finality also compromise the rehabilitation of prisoners. Rehabilitation begins with the criminal accepting society's judgment. Habeas delays that acceptance, making rehabilitation more difficult. See *id.*, at 452. Society needs repose for an effective criminal justice system. See *ibid.* At a certain point, proceedings must end.

> "Both the individual criminal defendant and society have an interest in insuring that there will at some point be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error but rather on whether the prisoner can be restored to a useful place in the community."

Sanders v. *United States*, 373 U. S. 1, 24-25 (1963) (Harlan, J., dissenting).

This is what the habeas statute of limitation is intended to limit. If finality requires that proceedings must end at some point, then it also requires that the habeas proceedings have a definitive starting point. Something cannot end until it has first started, and the statute of limitation establishes a definitive, relatively early start for habeas proceedings. Analysis of Rule 15(c)(2) as applied to habeas should be made in this context. The special problems of habeas and the important role that the statute of limitation plays in addressing them are essential to understanding how the Ninth and Seventh Circuits have improperly expanded Rule 15(c)(2) in habeas cases.

II. The Ninth Circuit's decision to allow unlimited amendment of habeas petitions under Rule 15(c)(2) is incompatible with the AEDPA.

The problem with the approach of the Ninth Circuit to Rule 15(c)(2) in habeas corpus is that it allows effectively unlimited

amendments to federal habeas petitions. A right to unlimited amendment substantially diminishes the finality interests advanced by § 2244(d)(1)'s statute of limitation. Given the importance of finality, and the AEDPA's protection of that interest, this broad right to amendment is improper.

A. Unlimited Amendment.

Federal Rule of Civil Procedure 15(c)(2) allows an amendment to relate back to the initial filing when the new claim arises from the same "conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." In civil cases, this is not a right to unlimited relation back. Different transactions like "the separate publication of a libelous statement, the breach of an independent contract [or] the infringement of a different patent" may not relate back under Rule 15(c). See 6A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1497, pp. 73-74 (2d ed. 1990) (footnote omitted). Relation back is acceptable for amendments that make technical corrections in the original pleadings. See *id.*, at 74. The key issue in close cases is whether the new action is so different, "that it cannot be said that defendant was given adequate notice of the conduct, transaction, or occurrence that forms the basis of the claim or defense . . . ." *Id.*, at 79 (footnotes omitted). This follows from the purpose behind the civil statute of limitation, giving notice to the adverse party so that it may be able to respond to the claim. See *supra*, at 9. Like the analysis of "compulsory counterclaims, cross-claims, and certain third party claims," courts look "for a common core of operative facts in the two pleadings." *Id.*, at 85 (footnotes omitted). Ultimately, "a failure of notice will prevent relation back." *Id.*, at 86-88.

The Ninth Circuit chose to apply this system to habeas petitions in the broadest manner possible. It held that the relevant transaction for Rule 15(c)(2) is the "trial and conviction under attack," *Felix* v. *Mayle*, 379 F. 3d 612, 615 (CA9 2004), thus effectively allowing unlimited relation back of

amendments to habeas petitions.[4] Under the Ninth Circuit's analysis, once it is determined that the claim in the amendment is part of the same transaction, the notice requirement is satisfied. See *id.*, at 617. A collateral attack on a conviction in federal habeas necessarily questions the validity of the trial or sentence. Felix "is challenging the usual subject of a habeas petition—the custody that results from his conviction and trial." *Id.*, at 616. Therefore, in the Court of Appeals' view, any claim that can be raised in a habeas petition attacking the conviction or sentence necessarily relates back under Rule 15(c)(2).

It is true that rules of civil procedure allow courts to deny amendments due to "undue delay, bad faith or dilatory motive . . . ." *Foman* v. *Davis*, 371 U. S. 178, 182 (1962). This finding can be difficult to make since it often requires an inquiry into the motives of counsel and the petitioner, and because of a strong preference for amendment under the rules of civil procedure. In civil actions there is an "extremely liberal" policy of allowing amendments. 3 J. Moore, D. Coquillette, G. Joseph, S. Schreiber, J. Solovy, & G. Vario, Moore's Federal Practice § 15.14[a], pp. 15-27 to 15-28 (3d ed. 2003); Fed. Rule Civ. Proc. 15(a) ("leave shall be given freely when justice so requires"). This policy necessarily limits the ability of courts to deny leave to amend. See Moore's Federal Practice § 15.14[a], at 15-28. For example, before AEDPA the Third Circuit held that it was an abuse of discretion to deny an additional six months to amend, when petitioner had already been allowed over five months since his original filing. See *Riley* v. *Taylor*, 62 F. 3d 86, 88-89 (1995).

The AEDPA was enacted because Congress was dissatisfied with the status quo in habeas corpus and believed reform was necessary in order to protect "comity, finality, and federal-

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4. Section 2254 petitions are always directed to judgments of a single court, see Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts, and rarely involve more than one judgment.

ism." *Williams* v. *Taylor*, 529 U. S. 420, 436 (2000). Drawing on the Powell Committee's analysis of the delay inherent in the old habeas system, Congress enacted the AEDPA with a vigorous statute of limitation. This provision does not merely give the courts the power to dismiss dilatory amendments, because the federal courts already had that power. Former Habeas Rule 9 allowed district courts to dismiss initial habeas petitions for dilatory filing where the delay prejudice the state's case. See Rule 9(a) of the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules"), 28 U. S. C. foll. § 2254, at 476 (2000 ed.). Rule 9 did not give the courts the power to dismiss dilatory petitions absent a finding of prejudice. See *Lonchar* v. *Thomas*, 517 U. S. 314, 326-327 (1996). While this Court noted, the "considerable debate about whether the present Rule properly balances the relevant competing interests" that debate had to be resolved by Congress or the rulemaking process. *Id.*, at 328. With § 2244(d)(1), Congress resolved that debate by creating an obligation on the federal courts to dismiss late habeas claims without a showing of prejudice. It demonstrates Congress's dissatisfaction with how the federal courts had handled dilatory petitions and replaced a very permissive regime with a much stricter procedure. The proper interpretation of Rule 15(c)(2) leaves the strict time limit intact.

In his opposition to certiorari, Felix claimed that the Ninth Circuit's rule is more nuanced than this. He asserts that since he does not attack the constitutionality of his sentence, whether the trial, conviction, and sentence are all part of a single transaction under Rule 15(c)(2) is not presented in this case. See Opp., at 6. He indicates that his claim could relate back under a narrower standard because "both claims arise out of a discrete step in the litigation process—his trial, and attack the same actor—the state trial judge who admitted the unconstitutional statements into evidence." *Ibid.*

This argument claims more that it can prove. While Felix is not attacking his sentence, the Ninth Circuit viewed the entire

"trial and conviction" as one transaction under Rule 15(c)(2). See *Felix*, 379 F. 3d, at 615. Also, the Ninth Circuit did not distinguish a case that made a distinction between trial and sentence claims, but instead chose to disagree with it. See *id.*, at 615-616 (citing *Davenport* v. *United States*, 217 F. 3d 1341, 1344-1345 (CA11 2000) (ineffective assistance at sentencing claim does not relate back to an ineffective assistance at trial claim)).

Also this proposed synthesis of the Ninth Circuit's holding seems arbitrary. Felix gives no good reason why the admission of evidence should be distinguished as a transaction from the trial as a whole, other than avoiding review of this case. Since the Ninth Circuit's rule is based on notice, see *Felix*, 379 F. 3d, at 616-617, there would be no logical limit to a petitioner's ability to have an otherwise valid, but time-barred, claim relate back. Under the Ninth Circuit's holding, the state has no notice interest that can be protected through the statute of limitation. As it has already litigated the legality of its custody over the petitioner, and because the habeas petition attacks the legality of that custody, the state necessarily has notice that the legality of the trial and conviction will be attacked.

Habeas procedure makes it highly likely that the state will also have actual notice of any specific claim that the petitioner may be able to raise in an amended petition. The doctrines of exhaustion and procedural default, when properly enforced, prevent claims from reaching a federal habeas court that have not yet been raised in state court. See *supra*, at 10. As a general rule, the state will have already litigated in state court any claim made in the amended petition.[5]

This does not mean that the Ninth Circuit was correct. By limiting Rule 15(c)(2) to notice, it rendered the habeas statute

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5. As noted *supra*, note 3, the Ninth Circuit has effectively nullified the appellate default rule. However, the requirement of objection at trial remains in force. See *Bonin* v. *California*, 59 F. 3d 815, 842-843 (CA9 1995).

of limitation irrelevant by focusing on the wrong objective. The habeas statute of limitation protects the finality of convictions rather than notice. See Part I, *supra*. The relevant question in this case is the effect that the liberal relation back allowed by the Ninth Circuit has on the finality interests protected by the AEDPA. Had the Ninth Circuit addressed this issue, it would have reached a different conclusion.

B. Unlimited Amendment and Finality.

The Ninth Circuit's decision to allow unlimited relation back of amended claims under Rule 15(c)(2) hamstrings the interests in finality that the habeas statute of limitation is intended to protect. If upheld, the Ninth Circuit's decision makes it far too easy for a prisoner to circumvent the statute of limitation and delay proceedings through the use of amendments. This type of abuse happened before the AEDPA and was a major reason that Congress passed the habeas limits of the AEDPA.

Amending a habeas petition to introduce a new claim will often delay the resolution of the case. If the claim is not trivial or clearly improper to consider under procedural default or exhaustion, then the state will have to research and write a reply, and the court will have another issue to consider. If supplemental factfinding is required, then there can be further delay for discovery and an evidentiary hearing. Where the amendment involves a legal theory not previously litigated or appeal or habeas, as happened in this case, further research, writing, and argument is all but certain. If the argument had not previously been addressed in state court, then it may also be necessary to address procedural default or exhaustion.

There is a fundamental difference between habeas procedure under the AEDPA and civil procedure under the Federal Rules of Civil Procedure. The civil procedure rules are meant to resolve the cases on their merits rather than on the pleadings. They require a "just, speedy, and inexpensive determination of every action." See Fed. Rule Civ. Proc. 1. Similarly, Rule 8(f)

requires pleadings to be construed to do "substantial justice," Fed. Rule Civ. Proc. 8(f), and Rule 61 states that courts should ignore errors that do not effect the substantive rights of the parties. See Fed. Rule Civ. Proc. 61.

Rather than encouraging decisions on the merits, the AEDPA places substantial limits on habeas corpus when it is used as a collateral attack on a criminal judgment. State court is the primary forum for deciding the merits. Federal habeas is "secondary and limited," *Barefoot* v. *Estelle*, 463 U. S. 880, 887 (1983), for the purpose of correcting "extreme malfunctions" of the state court system. *Jackson* v. *Virginia*, 443 U. S. 307, 332, n. 5 (1979) (Stevens, J., concurring in the judgment). The habeas statute of limitation does not protect litigants from being surprised by stale claims, but instead preserves the finality of convictions by encouraging the speedy resolution of federal habeas petitions. See *supra*, at 11-13. While not as severe as common law pleading, habeas under the AEDPA is removed from the relative liberality of the civil rules. Although the AEDPA did not change the law making the rules of civil procedure govern amendments to habeas petitions, see 28 U. S. C. § 2242, this law and Rule 15(c)(2) now operate in the very different world of the AEDPA.

The inevitable diminishment of finality resulting from the Ninth Circuit's right to unlimited amendment subverts the statute of limitation. Under this ruling there will be no definite beginning for habeas actions, and their end is susceptible to considerable delay. This result is potentially crippling to the finality of many convictions and is thus contrary to the intent of Congress. Fidelity to the AEDPA requires a different interpretation of Rule 15(c)(2).

III. In habeas actions, the relevant "conduct, transaction, or occurrence" for relating back an amended petition under Rule 15(c)(2) must at least come from the same core set of facts as a timely filed claim.

Other circuits have adopted a much narrower definition of "conduct transaction, or occurrence," than the Ninth Circuit. Rather than viewing the whole trial as a single transaction under Rule 15(c)(2), other circuits typically require that "in order to relate back, the untimely claim must have arisen from 'the same set of facts' as the timely filed claim, not from separate conduct or a separate occurrence in 'both time and type.' " *Davenport* v. *United States*, 217 F. 3d 1341, 1344 (CA11 2000) (quoting *United States* v. *Pittman*, 209 F. 3d 314, 318 (CA4 2000)) ("both time and type"); *United States* v. *Duffus*, 174 F. 3d 333, 337 (CA3 1999) ("same set of facts"). This is the better definition of Rule 15(c)(2). It protects the AEDPA's statute of limitation while retaining fidelity to the text of Rule 15(c)(2).

The Ninth Circuit supports its ruling by asserting that a narrower claim-based definition would render Rule 15(c)(2) "virtually meaningless in a habeas context." *Felix* v. *Mayle*, 379 F. 3d 612, 615 (CA9 2004). This overstates the effect of a narrower interpretation of Rule 15(c)(2) and reflects misplaced priorities. While the alternative interpretation of Rule 15(c)(2) is narrower than the Ninth Circuit's, it does not completely foreclose relation back in habeas litigation. It is possible for one core set of facts to support more than one legal ground for attacking the conviction. For example, a post-indictment interrogation of the suspect can raise issues regarding the admissibility of any statements made during the questioning under the Sixth Amendment right to counsel, see *Massiah* v. *United States*, 377 U. S. 201 (1964) and the Fifth Amendment self-incrimination privilege, see *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Since it is entirely possible for a court to miss one of these two issues when analyzing a case, see *Fellers* v. *United States*, 540 U. S. 519, 525 (2004), a

habeas petitioner could miss one of these claims in the first petition. The narrower, fact-based interpretation of Rule 15(c)(2) would still allow relation back in such a case. For example, if the *Miranda* claim was filed within the statute of limitation, a later *Massiah* claim arising from the same interrogation as the *Miranda* claim would relate back to the original claim under Rule 15(c)(2).

The Ninth Circuit has made an even more fundamental error. The focus of the analysis should not be on trying to breathe life into Rule 15(c)(2), a rule written for civil litigation without habeas in mind. See *Harris* v. *Nelson*, 394 U. S. 286, 294 (1969). Instead, Rule 15(c)(2) cannot be allowed to frustrate the intent behind the AEDPA and its statute of limitation. The statute of limitation is an integral part of a comprehensive reform of habeas corpus. In any conflict between the two, the purpose of the specific habeas statute should prevail over the purpose of the general civil rule. See *Harris*, *supra*, at 296 (civil rules inapplicable to habeas when "ill-suited"); Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts.

It is true that Congress allows the civil rules to govern amendment in habeas actions. See 28 U. S. C. §2242. Enactments are not interpreted "in isolation, but in the context of the *corpus juris* of which they are a part, including later-enacted statutes." *Branch* v. *Smith*, 538 U. S. 254, 281 (2003) (plurality opinion). This is not an argument for the extraordinary measure of repeal by implication. See *Radzanower* v. *Touche Ross & Co.*, 426 U. S. 148, 155 (1976). Rule 15(c)(2) will continue to have an effect in habeas actions. Its low profile simply reflects the differences between habeas and ordinary civil litigation and the intent of the AEDPA.

Civil statutes of limitation prevent claimants from ever litigating their claim. In this situation, a relatively liberal Rule 15(c)(2) is understandable. See *supra*, at 10. As noted earlier, habeas and its relitigation of claims is a very different proceeding with substantially different interests. See *supra*, at 10.

These differences support a comparatively restrictive reading of Rule 15(c)(2) in the context of habeas corpus. The fact-based rule adopted by the other circuits allows for some relation back, while protecting the AEDPA's statute of limitation from the finality-compromising free amendment regime imposed by the Ninth Circuit.

Felix's amended petition cannot relate back under these principles. His Fifth Amendment claim is based upon police interrogation of himself that is factually distinct from his Confrontation Clause claim which is based upon the admission of the videotaped interview of Williams. See *supra*, at 3-4. This result is neither unfair nor contrary to the intent of Congress. Felix had ample opportunity to litigate his Fifth Amendment claim in the California courts, and he could have included it in his first federal habeas petition. Even if he lacked the expertise to recognize the Fifth Amendment claim, appointed counsel had almost two and one-half months to file the Fifth Amendment claim before the statute of limitation ran. See Pet. for Cert. 3. Felix had his chance, and he lost it. Finality and fairness require no less than dismissing the *Miranda* claim.

CONCLUSION

The decision of the United States Court of Appeals for the Ninth Circuit should be reversed.

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Respectfully submitted,

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